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Attorneys for Plaintiff UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,) No.: CR 05-00400 SI
Plaintiff,)
____ v. _____) STIPULATION AND [PROPOSED]
ANDRE BENARD,) ORDER EXCLUDING TIME
Defendant.) FROM SPEEDY TRIAL CALCULATION

With the agreement of the parties, the Court enters this Order excluding the time period from February 24, 2006 through March 10, 2006 under the Speedy Trial Act, 18 U.S.C. § 3161. The parties agree, and the Court finds and holds, as follows:

1. The Defendant is in custody serving a pre-existing state sentence of imprisonment.

The parties appeared before the Court on February 24, 2006 for a status hearing and reported that they were engaged in plea negotiations. The parties requested March 10, 2006 as a possible change of plea date.

2. At the status hearing, the parties also reported that, two days prior to the status hearing, the Ninth Circuit issued an opinion, United States v. Morales-Perez, No. 05-10115 (9th Cir. Feb. 22, 2006), which will have a direct bearing on the Sentencing Guidelines calculation in this case. At issue is whether the Defendant's prior narcotics conviction qualifies as a

1 "controlled substance offense" within the meaning of U.S.S.G. § 2K2.1. In light of this
2 precedent, the parties requested time to obtain and review the record of conviction for the
3 Defendant's prior narcotics offense. At the parties' request, the Court excluded the time period
4 through March 10, 2006 from the Speedy Trial Act calculation based on the need to obtain this
5 additional discovery. This filing memorializes that exclusion of time.

6 3. In light of the foregoing facts, the parties stipulate that the failure to grant the
7 requested exclusion would unreasonably deny the Defendant effective preparation of counsel
8 taking into account the exercise of due diligence, that the ends of justice would be served by the
9 Court excluding the proposed time period, and that these ends outweigh the best interest of the
10 public and the Defendant in a speedy trial. 18 U.S.C. § 3161(h)(8)(A), (B)(iv).

11 SO STIPULATED.

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13 DATED: March 2, 2006 /S/ MARK GOLDROSEN
14 MARK GOLDROSEN
Attorney for Defendant Andre Benard

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16 DATED: March 2, 2006 /S/ EDWARD TORPOCO
17 EDWARD TORPOCO
Assistant United States Attorney

18 In light of the foregoing facts, and with the consent of the parties, the Court hereby orders
19 that the period from February 24, 2006 through March 10, 2006 be excluded from the Speedy
20 Trial Act calculation under 18 U.S.C. § 3161(h)(8)(A), (B)(iv).

21 PURSUANT TO STIPULATION, IT IS SO ORDERED



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23 DATED: _____ HON. SUSAN ILLSTON
24 United States District Judge

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28 STIPULATION AND ORDER
CR 05-00400 SI